

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Deedra Pulda,

Plaintiff,

V.

Target Stores, Inc., a Minnesota Corporation dba Target Corporation, John Does and Jane Does 1-10, ABC Corporations 1-10 and XYZ Partnerships 1-10,

Defendant.

No. CV-13-00399-PHX-DGC

ORDER

Defendant Target Stores, Inc. (“Target”) has filed a motion for summary judgment. Doc. 37. The motion is fully briefed and no party has requested oral argument. The Court will grant the motion.

I. Background.

On January 25, 2011, Plaintiff Deedra Pulda was injured while shopping with her adult daughter, Candace Dodd, and grandson at a Target store in Ahwatukee, Arizona. After completing her purchases, Plaintiff slipped and fell on a trail of clear liquid near the registers. At the time Plaintiff fell, she was following directly behind Ms. Dodd, who was pushing a shopping cart that was carrying a case of water underneath the main basket. Neither Plaintiff nor Ms. Dodd saw anything on the floor prior to Plaintiff's fall, and neither woman knew how the liquid got on the floor or how long it had been there.

At the time of the incident, there were at least three Target employees in the

1 vicinity, including two cashiers and an employee at the customer service desk. Video
2 surveillance footage shows several guests and employees passing through the area
3 approximately ten seconds before Plaintiff's accident. No employees or guests reacted to
4 any liquid on the ground or experienced a slip or fall.

5 **II. Legal Standard.**

6 A party seeking summary judgment "bears the initial responsibility of informing
7 the district court of the basis for its motion, and identifying those portions of [the record]
8 which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*
9 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
10 evidence, viewed in the light most favorable to the nonmoving party, shows "that there is
11 no genuine dispute as to any material fact and the movant is entitled to judgment as a
12 matter of law." Fed. R. Civ. P. 56(a). Only disputes over facts that might affect the
13 outcome of the suit will preclude the entry of summary judgment, and the disputed
14 evidence must be "such that a reasonable jury could return a verdict for the nonmoving
15 party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

16 **III. Analysis.**

17 Under applicable Arizona law, a business owner "is not an insurer of the safety of
18 a business invitee, but only owes a duty to exercise reasonable care to his invitees."
19 *Walker v. Montgomery Ward & Co., Inc.*, 511 P.2d 699, 702 (Ariz. Ct. App. 1973)
20 (citations omitted). "The mere occurrence of a fall on a floor within business premises is
21 insufficient to prove negligence on the part of the proprietor." *Id.* To impose premises
22 liability, Plaintiff must prove that the dangerous condition was a result of Target's acts or
23 that Target had actual or constructive knowledge of the condition. *Id.*

24 Plaintiff does not argue that Target or any of its employees created or had actual
25 knowledge of the hazardous condition. The only possible basis for Target's liability,
26 therefore, is Target's constructive notice of the dangerous condition.

27 Plaintiff argues that there is sufficient evidence from which a reasonable jury
28 could find that Target had constructive notice of the dangerous condition. Doc. 39 at 4-5.

1 She argues the following facts: Plaintiff slipped and fell in an area immediately adjacent
 2 to store registers that were occupied by Target employees; the area had heavy customer
 3 and employee traffic and should have been under constant inspection by Target
 4 employees; after Plaintiff fell, a trail of water approximately 15 feet long and one foot
 5 wide was observed on the floor; and surveillance video shows the water trail could have
 6 been on the ground for at least ten seconds while employees were working within a few
 7 feet of its location. Doc. 39 at 5. Plaintiff argues that even if Target's employees did not
 8 see the water trail, "it is reasonable to infer that they could or should have seen it (or
 9 recognized water was being spilled) if they had been [exercising reasonable care]." *Id.*

10 "One of the most important questions that must be answered in establishing
 11 constructive notice of a dangerous condition is the [l]ength of time that a given foreign
 12 substance has been present." *Walker*, 511 P.2d at 702. "Only if [a dangerous condition]
 13 had been [present] for a sufficient length of time for the defendant, in the exercise of
 14 reasonable care, to find and remove it, could the defendant be found negligent."
 15 *McGuire v. Valley Nat'l Bank of Phoenix*, 381 P.2d 588, 590 (Ariz. 1963).

16 In *Walker*, the plaintiff brought suit when she slipped on a "wet, yellowish
 17 substance" determined to be a peach, or a piece of a peach. 511 P.2d at 701. The trial
 18 court granted summary judgment in the defendant's favor because the plaintiff was
 19 unable to show how long the hazard had been on the floor. *Id.* at 703. The Arizona
 20 Court of Appeals affirmed, ruling that a plaintiff "must show that the defective condition
 21 had been in existence for a sufficient length of time prior to the injury for the defendant,
 22 in the exercise of reasonable care, to find and correct it, or take remedial action." *Id.* at
 23 703; *see also Contreras v. Walgreens Drug Store No. 3837*, 149 P.3d 761, 762 (Ariz. Ct.
 24 App. 2006) (affirming trial court's grant of summary judgment for Walgreens where
 25 plaintiff "presented no evidence that Walgreens' employees either caused or knew of the
 26 dangerous condition" nor any evidence "as to the length of time that the spill existed.").

27 In this case, Plaintiff has produced no evidence of when the liquid appeared on the
 28 floor or how long it was there before she slipped. Indeed, Plaintiff and Ms. Dodd each

1 testified that they do not know how long the liquid was on the ground or how it got there.
2 Doc. 38 at 19, 22-23. Although Plaintiff points to the store video as evidence that no
3 person walked through the area in the ten seconds before her fall, the video does not
4 show the liquid, and Plaintiff does not present evidence that the liquid was on the floor
5 before the ten-second period began. One possibility from the evidence is that Plaintiff
6 slipped on water that leaked from the case of water beneath the shopping cart Ms. Dodd
7 was pushing in front of Plaintiff. The evidence presented by Plaintiff does not rule out
8 this possibility.

9 Under *Walker* and subsequent Arizona cases, Plaintiff must produce evidence that
10 the liquid was on the floor long enough for Target and its employees, in the exercise of
11 reasonable care, to find and remedy the hazard. Plaintiff has not done so, and summary
12 judgment must therefore be entered in favor of Target. *See Walker*, 511 P.2d at 703;
13 *Contreras*, 149 P.3d at 762; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)
14 (summary judgment is appropriate against a party who “fails to make a showing
15 sufficient to establish the existence of an element essential to that party’s case, and on
16 which that party will bear the burden of proof at trial.”).

17 **IT IS ORDERED** that Target’s motion for summary judgment (Doc. 37) is
18 granted. The Clerk is directed to terminate this matter.

19 Dated this 4th day of June, 2014.

20
21
22
23
24
25
26
27
28



David G. Campbell
United States District Judge